IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

ARBITRATION PETITION NO. 26 OF 2006

Mrs. Ujjwala Satish Haware and anr. ...Petitioners

Versus

Smt. Pratima Reddy and others ...Respondents

Mr. Akhilesh S. Dubey for the petitioners.
Mrs. Rama S. Pendkalkar for the respondents.

CORAM: **H.S. BEDI, C.J.**

DATE: DECEMBER 01, 2006.

P.C.

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act") for appointment of an Arbitrator in terms of the agreement at Exhibit-A to the petition. Clause 12 of this agreement provides that any dispute or differences that arises between the parties hereto shall be resolved by the machinery of arbitration constituted under the provisions of the Act. It is the case of the applicants that they had filed an application before the District Judge,Thane, and the District Judge opined that an Arbitrator ought to be appointed but expressed lack of jurisdiction in view of the provisions of Section 11 of the Act as the jurisdiction for appointment of an Arbitrator lay with the Chief Justice of the High Court.

It is in this situation that the present application has been preferred in this Court.

2. Several pleas have been raised by the learned counsel appearing for the respondents, inter alia, that the notice invoking the arbitration clause had not been served on them, that no dispute between the parties had been raised or existed, and that the arbitration clause if at all could be invoked not in the Courts at Mumbai but in Hyderabad.

3. There is no merit in either of these pleas. Concededly, the District Judge had already opined, and for very good reasons, that an Arbitrator ought to be appointed but he could not do so in view of Section 11 of the Act which stipulates that the Arbitrator would be appointed by the Chief Justice of the High Court. Likewise, it is clear from the postal registration receipts, which are on record, that notices had been sent by the applicants to the respondents and merely because the acknowledgement due receipts had not been returned to them would not mean that the notice had not been served. It is also clear from the record that the agreement in question had been executed in Mumbai which would give the Chief Justice of this Court jurisdiction

in the matter.

4. The petitioners had suggested the name of Mr. Justice Y.B. Chandrachud, former Chief Justice of India, as the sole Arbitrator. To my mind, there can be no dispute with regard to his appointment as an Arbitrator. It is ordered accordingly. Mr. Justice Y.B. Chandrachud is requested to act as an Arbitrator in this matter. The parties agree to inform the learned Arbitrator of this order. This petition is accordingly disposed of.

CHIEF JUSTICE